

(b) and (c) under § 224.103, as paragraphs (c) and (d), respectively, and a new paragraph (b) was added for the Alaska humpback whale approach regulations. However, the final rule did not make the changes to the right whale approach regulations, which were previously codified as paragraph (b), necessary to reflect the redesignation as paragraph (c). In other words, the subparagraphs under the right whale approach regulations still referred to its previous location in paragraph (b).

This rule does not substantively impact the public's current expectations, increase the scope of the regulated community, or add any new requirements to these regulations. This rule makes a minor change to the regulations for approaching right whales, which corrects an unintended error caused by a previous final rule that reordered the paragraphs in § 224.103.

Need for Correction

As published, the regulations governing approaches to right whales contain errors that may be misleading and need to be corrected.

Classification

The Assistant Administrator for Fisheries, NMFS (AA) finds that good cause exists to waive the requirement for prior notice and the opportunity for comment, pursuant to 5 U.S.C. 553(b)(B). Such procedures would be unnecessary because the changes made in this rule do not substantively change the regulations for approaching right whales. Therefore, it does not alter the scope of the regulated community nor add any new requirements. For the same reasons, the AA finds that good cause exists to waive the 30-day delay in effective date. Any delay in implementing this technical change would be impracticable, unnecessary, and contrary to the public interest. A delay in implementing these changes would be unnecessary because they do not substantively alter the regulations for approaching right whales by increasing the scope of the regulated community or adding any new requirements. Accordingly, pursuant to 5 U.S.C. 553(d)(3), a delay in the effective date is waived.

In addition, because general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This action is not subject to review under Executive Order 12866 because the changes made are non-substantive.

This final rule does not impact the human environment, therefore, NMFS

has determined that this action is not subject to the analytical requirements of the National Environmental Policy Act.

This final rule does not contain policies with federalism implications under Executive Order 13132.

List of Subjects in 50 CFR part 224

Endangered and threatened species, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 50 CFR part 224 is corrected by making the following correcting amendments:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.103 [Amended]

2. In the table below, in § 224.103, for each paragraph indicated in the left column, remove text from the middle column from wherever it appears in the paragraph, and add the text indicated in the right column:

Paragraph	Remove	Add
(c)(1)	(b)(3)	(c)(3)
(c)(1)(ii)	(b)(2)	(c)(2)
(c)(2)	(b)(3)	(c)(3)
(c)(3)(i)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(ii)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(iii)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(iv)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(v)	(b)(2)	(c)(2)

Dated: November 23, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 04–26413 Filed 11–29–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040910261–4325–02; I.D. 072704A]

RIN 0648–AS08

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule adjusts the regional quotas and establishes new trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on updated landings information. This final rule includes a framework mechanism for the annual adjustment of quotas, a method of accounting for over- or underharvests in the transition from semi-annual to trimester seasons, and a new process for notifying participants of season opening and closing dates and quotas. This final rule also announces the opening and closing dates for the LCS fishery based on adjustments to the regional and trimester quotas. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data and accurately reflect historic and current fishing effort.

DATES: This final rule is effective on January 1, 2005. The Atlantic commercial shark fishing season opening and closure dates are provided in Table 1 under **SUPPLEMENTARY INFORMATION**. The 2005 second and third trimester season dates will be published at a later date in the **Federal Register**.

ADDRESSES: For copies of the Final Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) contact Chris Rilling, Highly Migratory Species Management Division at 1315 East-West Highway, Silver Spring, MD 20910 or at (301) 713–1917 (fax). Copies are also available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Chris Rilling, or Mike Clark by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Opening and Closure Dates

The Atlantic commercial shark fishing season opening and closure dates are provided in the following table:

TABLE 1 – OPENING AND CLOSURE DATES

Species Group	Region	First Trimester Season Opening Dates	First Trimester Season Closure Dates
Large Coastal Sharks	Gulf of Mexico	January 1 - February 28, 2005, 11:30 p.m. local time.	February 15, - April 30, 2005, 11:30 pm local time
.....	South Atlantic	January 1 - February 15, 2005, 11:30 p.m. local time.	February 28, - April 30, 2005, 11:30 pm local time
.....	North Atlantic	January 1 - April 30, 2005, 11:30 p.m. local time.	April 30, 2005, 11:30 pm local time
Small Coastal Sharks	Gulf of Mexico	January 1 - April 30, 2005, 11:30 p.m. local time.	April 30, 2005, 11:30 pm local time
.....	South Atlantic		April 30, 2005, 11:30 pm local time
.....	North Atlantic		April 30, 2005, 11:30 pm local time
Blue sharks	No regional quotas	January 1 - April 30, 2005, 11:30 p.m. local time.	April 30, 2005, 11:30 pm local time
Porbeagle sharks	No regional quotas		April 30, 2005, 11:30 pm local time
Pelagic sharks other than blue or porbeagle.	No regional quotas		April 30, 2005, 11:30 pm local time

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the HMS FMP are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 to the HMS FMP that established, among other things, the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw) and the 2004 annual landings quota for SCS at 454 mt dw. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split among the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. The quota for SCS was split among the three regions as follows: 4 percent to the Gulf of Mexico, 83 percent to the South Atlantic, and 13 percent to the North Atlantic.

On September 17, 2004, NMFS published a proposed rule (69 FR 56024) to: update the regional quotas that were established in Amendment 1, implement new trimester season quotas, and account for over- or underharvests in the transition from semi-annual to trimester seasons. The proposed rule also considered a framework mechanism to adjust regional quotas on an annual basis, as necessary. NMFS held three public hearings during the public comment period, which closed

on October 18, 2004, for both the proposed rule and the Draft EA.

Recent updates to the regional landings data and new data collected since the publication of the December 24, 2003, final rule (68 FR 74746) indicate that the regional quotas need to be adjusted. The preamble of the September 17, 2004 proposed rule (69 FR 56024) contains the alternatives that were considered and is not repeated here.

Additionally, beginning on January 1, 2005, each regional quota will be divided among three trimester seasons rather than two semi-annual seasons. The first trimester season will operate between January 1 and April 30, the second trimester season will operate between May 1 and August 31, and the third trimester season will operate between September 1 and December 31. This final rule divides each region's quota among the three trimester seasons, and accounts for over- or underharvests in the transition from semi-annual to trimester seasons.

Response to Comments

Comments on the September 17, 2004, proposed rule (69 FR 56024) received during the public comment period are summarized below and are organized according to the alternatives considered in the proposed rule, together with NMFS' responses.

Regional Quota Adjustment

Comment 1: NMFS should make as few changes as possible until it has a better handle on the data.

Response: NMFS has updated landings information that represents the best information available and indicates that updates to the regional quotas are warranted. The updated information is based on several different databases that were analyzed for shark landings as part of this rulemaking, including: the

canvass, quota monitoring, Northeast Commercial Fisheries database system (CFDBS), and snapper grouper logbook databases. NMFS believes that by considering a cross-section of different databases the reliability of the data is enhanced and any potential errors will be minimized and mitigated to the extent possible.

Comment 2: The North Atlantic region landings outlined in the Draft EA do not appear to be accurate.

Response: NMFS agrees that the landings data referred to by the commenter on page 21 of the Draft EA were incorrect. This discrepancy resulted from the inclusion of North Carolina landings in the North Atlantic region. The North Carolina landings should have been included in the South Atlantic region. This error has been corrected in the final EA and the final rule. As a result of this correction, the percentages for the Gulf of Mexico and South Atlantic increased by 3 percent, and the North Atlantic decreased by 3 percent.

Comment 3: NMFS should select the single LCS and single SCS quota (Alternative A4) as the preferred alternative because the current accounting method (of regional landings) is not accurate.

Response: While selecting a single quota for LCS and SCS may simplify management, it does not account for regional differences in shark availability, current and historic landings, or timing of seasons. For example, the potential exists for the entire quota to be harvested in the South Atlantic and Gulf of Mexico during the first trimester season before the North Atlantic has had an opportunity to fish. Regional quotas help address these differences in shark availability and timing of seasons. NMFS believes that regional quotas provide a more equitable means of allocating quota and

ensure that each region is given the opportunity to harvest a quota that reflects historic landings in the region.

Comment 4: The effort shift to the Gulf of Mexico happened because of the ridgeback/non-ridgeback switch in 2003. Everyone was allowed to fish for blacktip sharks until May 15, but there are no blacktip sharks in North Carolina. Thus, the South Atlantic season has been unfairly shortened.

Response: While it is true that the ridgeback/non-ridgeback categories provided a larger quota for blacktip sharks (non-ridgeback) when compared with sandbar sharks (ridgeback) - which resulted in a longer season for ridgebacks in 2003 - the season lengths were longer in all regions, not just the Gulf of Mexico. Higher landings of blacktip sharks may have occurred in the Gulf of Mexico in 2003 as a result, however, NMFS analyzed several years of data in establishing regional quotas (1999–2003) to account for interannual variability and minimize the overall impact of landings in a single year. The shift in effort from the South Atlantic to the Gulf of Mexico has taken place over a number of years as a result of a number of factors including closures of the Florida East Coast to pelagic longline gear and the Oculina Banks. Therefore, NMFS does not believe that the season for the South Atlantic region is being unfairly shortened.

Comment 5: NMFS should explain why the regional quotas are so different from what they were in Amendment 1.

Response: Regional quotas in this final rule and Environmental Assessment are different from Amendment 1 to the HMS FMP because of errors in the data that have been corrected since Amendment 1 as well as the consideration of two additional years of landings data (from 2002–2003) which were included in the analysis. These data indicate an increase in landings in the Gulf of Mexico over the past several years and a leveling off or decrease in landings in the South Atlantic, depending on which database is analyzed. Since NMFS took the average of three databases that were available for the Southeast, the result was a net decrease in quota for the South Atlantic. This shift in effort is evident in landings data from years prior to the establishment of regional quotas in Amendment 1, in which the fishery was operating under a single quota for LCS and SCS. Thus, it is not likely that regional quotas were the causative factor in the shift in landings. The current regional quotas provide the best estimate of historic and current landings and fishing effort in the various regions.

Comment 6: NMFS is doing the right thing by developing a quota distribution scheme that will preclude one region from receiving an inequitable share of the overall quota.

Response: NMFS believes that the framework mechanism for adjusting regional quotas will cap the amount of quota that may be transferred from one region to another in any given year. This should prevent a drastic shift in quota from one region to another.

Trimester Season Allocations

Comment 7: NMFS should select the equal distribution of trimester season quotas for each region (Alternative B1) as the preferred alternative because it represents the fairest distribution of quota and would have the least impact on fishermen impacted by the mid-Atlantic closure.

Response: NMFS agrees that the equal distribution of trimester season quotas may be appropriate from some regions such as the Gulf of Mexico and the South Atlantic where harvest rates remain fairly stable throughout the year. However, the quotas should be allocated according to historic landings in the North Atlantic region. The North Atlantic region has historically harvested less than 20 percent of its annual landings during the first semi-annual season because sharks have not yet migrated into the region.

Comment 8: The current trimester season preferred alternative only allows approximately 16 trips in the South Atlantic during the third trimester season. NMFS should consider transferring the portion of the quota that would have been caught by North Carolina fishermen in the time/area closure during the first trimester season to the second and third trimester seasons.

Response: The final preferred alternative will divide the Gulf of Mexico and the South Atlantic trimester season quotas equally. See response to comment 7 above. As a result, the second and third trimester season quotas in the South Atlantic will be higher than they were in the proposed rule and should result in greater than 16 trips per season.

Comment 9: The North Atlantic region should not have any quota during the first trimester season. Its quota should be allocated to second and third trimester seasons when sharks are available.

Response: NMFS agrees that the North Atlantic trimester season quotas should be allocated according to historic landings in the region. A majority of the overall LCS quota for the North Atlantic will thus be available during the second

and third trimester seasons. Some LCS quota will be available for the first trimester season to account for nominal landings that have occurred during this period.

Comment 10: The way the seasons are set up now will result in catches of juvenile sharks. The summer season is when adults are caught; spring and fall are when juveniles and spawning females are caught. Dusky sharks are rarely caught in the summer. There should be no fishing in May or June for any participants in the fishery because this is the prime shark pupping season.

Response: The shark pupping season occurs from March through September in the Atlantic Ocean and Gulf of Mexico with a possible peak from May through June. The LCS fishery has usually been closed for at least some of the time during these peak pupping months. In order to reduce the likelihood of interactions with juvenile and reproductive female sharks, NMFS is considering a delay to the start of the second trimester season. A proposed start date for the second trimester season will be filed with the Office of the **Federal Register** for publication in early 2005.

Accounting for Over- or Underharvest in the Transition from Semi-Annual to Trimester Seasons

Comment 11: NMFS should select Alternative C4 to divide any over- or underharvest from the first semi-annual season between the first and second trimester seasons, and any over- or underharvest from the second semi-annual season to the second and third trimester seasons. This would give North Carolina fishermen a better chance at catching some of the quota since portions of North Carolina will be closed from January 1 to July 30 due to the time/area closure.

Response: NMFS received several comments in support of this alternative and agrees that this would be an appropriate method of accounting for over- or underharvest in the transition from semi-annual to trimester seasons. Thus, NMFS has selected it as the final preferred alternative in this final rule.

General

Comment 12: All shark catching and killing should be banned.

Response: NMFS does not believe that banning all shark fishing is warranted for the following reasons: a number of businesses, including fishermen, processors, suppliers, and dealers could be forced out of business and a number of communities, including recreational fishing communities, would be adversely affected. In addition, the current rebuilding plans that are in

place ensure a sustainable fishery and viability of Atlantic shark populations, as well as the requirements of the Magnuson-Stevens Act and other domestic laws.

Comment 13: A number of commenters suggested that NMFS should consider starting the second trimester season on either July 6, 2005, at the earliest, or on August 1 to help market balance and ease the economic hardship on fishermen in North Carolina who will be impacted by the time/area closure.

Response: NMFS is aware of concerns that starting the shark fishing season just prior to the Fourth of July weekend is not conducive to the sale and marketing of shark product.

Consequently, NMFS will consider alternative start dates in a proposed rule regarding the second trimester season lengths and quotas in early 2005.

Comment 14: NMFS should set aside adequate incidental quota to reduce/eliminate regulatory discards by covering the inevitable incidental catches in many other fisheries.

Response: The 2002 LCS stock assessment took into account discards from target and non-target fisheries in determining maximum sustainable yield estimates upon which the quotas are based. However, setting aside an incidental quota to reduce or eliminate regulatory discards would further reduce the already low LCS commercial quota. This reduction of quota could impose additional economic hardships. NMFS may consider, consistent with the Magnuson-Stevens Act, an incidental quota as the stock rebuilds and the fishery stabilizes.

Comment 15: The current proposal for regional and trimester quotas eliminates what little remained of the shark fishery off North Carolina. How is this proposal consistent with National Standard 4?

Response: The final preferred alternatives of distributing quotas in proportion to historic landings, allocating trimester season quotas equally, and dividing over- or underharvests from the first semi-annual season of 2004 to the first and second trimester seasons of 2005 are consistent with National Standard 4 (NS4). As described in Amendment 1 to the HMS FMP, the establishment of regional quotas is not a direct allocation of fishing privileges nor does it discriminate between shark fishermen in different regions or states. The regional quota allocations are based on average historical landings and are intended to enhance equity. Even if the establishment of regional quotas might be considered an allocation, the regional quota system is consistent with NS4. It

is fair and equitable because it is based on historical landings, and NMFS will be able to monitor how quotas are used and adjust them over time to promote achievement of optimum yield. With regard to North Carolina, NMFS believes that allocating 42 percent of the total LCS quota, and 88 percent of the total SCS quota to the South Atlantic region, and dividing the quota equally between the three trimester seasons will help minimize economic impacts to fishermen impacted by the time/area closure.

Comment 16: NMFS should maintain the semi-annual quotas that treat all states equally without changes to the quota allocation due to regulatory induced shifts in landings.

Response: The ecological and economic impacts of converting to trimester seasons were thoroughly analyzed in Amendment 1 to the HMS FMP. The proposed rule and this final rule do not propose reverting back to semi-annual seasons. NMFS believes that regional quotas, which are based on historic landings data, provide an equitable means of distributing quota.

Comment 17: NMFS should put pressure on states that are not in line with Federal shark laws.

Response: NMFS agrees and has been working with states to improve state-Federal consistency in how shark fisheries are managed.

Comment 18: Why is the Gulf of Mexico region opened longer than the South Atlantic, and will this not result in an overharvest again?

Response: The 2005 first trimester season in the South Atlantic region closes on February 15, 2005, and the Gulf of Mexico closes on March 15, 2005. To estimate closure dates, NMFS calculated the average reported catch rates for each region from the first semi-annual season from recent years (2001–2004) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure dates. Catch rates in the South Atlantic are higher than catch rates in the Gulf of Mexico, particularly during the months of January and February. Additionally, the South Atlantic quotas are lower than in the Gulf of Mexico. As a result, the South Atlantic season is shorter than the Gulf of Mexico season. NMFS has been using this type of method for calculating season length since 1999. Since that time, the number of overharvests has been reduced. However, if the quota is

exceeded the overharvest will be deducted from the following year's quota for the same fishing season and region.

Comment 19: Were pelagic longline logbook data included in the analysis of regional quotas?

Response: Pelagic longline logbook data were not included in the analysis because landings in that logbook are reported in numbers of fish, rather than fish weights as in the coastal fisheries logbook and the other databases used in the analysis. Additionally, although LCS are occasionally caught in the pelagic longline fishery, a majority of the LCS and SCS landings are reported in the coastal fisheries logbook. Furthermore, dealer data from the canvass, QMS, and Northeast CFDBS would also capture landings attributable to the pelagic longline fishery.

Changes From the Proposed Rule

NMFS has made several changes to the September 17, 2004 proposed rule (69 FR 56024). These changes are outline below.

1. In the proposed rule, NMFS proposed to allocate 49, 38, and 13 percent of the overall LCS quota to the Gulf of Mexico, South Atlantic, and North Atlantic, respectively. Due to an error in calculating regional landings, NMFS corrects the regional quotas for LCS in the Gulf of Mexico, South Atlantic and North Atlantic to 52, 41, and 7 percent of the overall LCS landings quota for each of the regions respectively. The error was attributed to including North Carolina landings in the North Atlantic region rather than in the South Atlantic region.

2. In the proposed rule, NMFS considered several alternatives for trimester season quota allocations, including allocating quotas according to historical landings as the preferred alternative. During the public comment period, NMFS heard comments in favor of splitting quotas evenly between the three trimester seasons in the Gulf of Mexico and the South Atlantic and setting quotas according to historic landings for the North Atlantic region. This allocation was proposed because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, whereas the shark harvesting period occurs primarily during the summer months in the North Atlantic region. Additionally, concerns were raised about allocating a large portion of the South Atlantic quota to the first trimester season when the time/area closure off North Carolina will be in effect. This could have had a negative economic impact on fishermen in North Carolina. By dividing the

quotas equally between the three trimester seasons a greater proportion of the quota will be available during August and September when the time/area closure is no longer in effect. As a result, the final rule will divide the quotas for the Gulf of Mexico and South Atlantic equally between the trimester seasons. The North Atlantic quota will be divided according to historical landings, with more of the quota being allocated to the summer months.

3. In the proposed rule, NMFS considered several alternatives to account for over- or underharvests in the transition from semiannual to trimester seasons. During the public comment period, NMFS heard comments in favor of dividing any over- or underharvests from the first semiannual season equally between the first and second trimester seasons, and any over- or underharvests from the second semiannual season equally between the second and third trimester seasons. As a result, in this final rule, NMFS will divide any over- or underharvests according to this method.

Annual Landings Quota

The base 2005 annual landings quotas for LCS and SCS will be 1,017 mt dw (2,242,078 lb dw) and 454 mt dw (1,000,888.4 lb dw), respectively. The 2005 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively.

As of October 2004, the overall first 2004 semi-annual quota for LCS, but not SCS, was exceeded. Reported landings of LCS were at 107 percent of the LCS semi-annual quota, and SCS landings were at 31 percent of the SCS semi-annual quota for the three regions combined. The Gulf of Mexico experienced an overharvest of 21 and 22 percent of its LCS and SCS regional quotas, respectively, during the first semi-annual season of 2004, and the South Atlantic experienced an overharvest of 5 percent of its LCS quota. As described below, the regional quotas will be adjusted based on these over- or underharvests.

Regional Landings Quotas

The first 2004 semiannual fishing season quota for LCS was established at 443.1 mt dw (December 24, 2003, 68 FR 74746). A June 15, 2004, final rule (69 FR 33321) adjusted the North Atlantic regional quota from a 50/50 to a 20/80 split between the first and second semi-annual seasons resulting in an adjusted quota of 8.0 mt dw for the first semiannual season in the North Atlantic. Applying the regional

percentages established in Amendment 1 this equated to 244.7, 190.3, and 8.0 mt dw for the South Atlantic, Gulf of Mexico, and North Atlantic regions, respectively. As of October 2004, approximately 486.9 mt dw LCS had been reported landed from all regions.

Consistent with this final rule, the annual LCS quota (1,017 mt dw) is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic.

Also consistent with this final rule, the LCS quota for the Gulf of Mexico and the South Atlantic is further split equally (33.3 percent/season) between the three trimester seasons. The quota for the North Atlantic will be 4, 88, and 8 percent, for the first, second, and third trimester seasons, respectively.

In the 2004 first semi-annual season, preliminary data indicate that the Gulf of Mexico had an overharvest of 39.7 mt dw, the South Atlantic had an overharvest of 11.1 mt dw, and the North Atlantic had an underharvest of 7.0 mt dw. Consistent with this final rule, the over- or underharvests will be divided equally between the first and second trimester seasons. Thus, the LCS quotas for the 2005 first trimester season is established as follows: the Gulf of Mexico - 156.3 mt dw ($1,017 \times .52 \times .333 - 39.7/2$) (344,579 lb dw); South Atlantic - 133.3 mt dw ($1,017 \times .41 \times .333 - 11.1/2$) (293,873 lb dw); and North Atlantic - 6.3 mt dw ($1,017 \times .07 \times .04 + 7/2$) (13,889 lb dw).

In the 2004 first semiannual fishing season for SCS, the quota was established at 280.9 mt dw (December 24, 2003, 68 FR 74746). This equated to 233.2, 36.5, and 11.2 mt dw for the South Atlantic, North Atlantic, and the Gulf of Mexico regions, respectively. As of October 2004, approximately 86.3 mt dw had been reported landed from all regions. This constitutes an underharvest for the first 2004 semiannual fishing season of 194.6 mt dw from all regions.

Consistent with this final rule, the annual SCS quota (454 mt dw) is split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

Also consistent with this final rule, the SCS quota for the Gulf of Mexico and the South Atlantic is further split equally (33.3 percent/season) between the three trimester seasons. The quota for the North Atlantic will be 1, 9, and 90 percent, for the first, second, and third trimester seasons, respectively, based on historical landings.

In the 2004 first semi-annual season, preliminary data indicate that the Gulf

of Mexico had an overharvest of 2.4 mt dw, the South Atlantic had an underharvest of 161.0 mt dw, and the North Atlantic had an underharvest of 36.1 mt dw. Consistent with this final rule, the over- or underharvests will be divided equally between the first and second trimester seasons.

Thus, the SCS quotas for the 2005 first trimester season are as follows: the Gulf of Mexico - 13.9 mt dw ($454 \times .10 \times .333 - 2.4/2$) (30,644 lb dw); South Atlantic 213.5 mt dw ($454 \times .88 \times .333 + 161/2$) (470,682 lb dw); and North Atlantic - 18.6 mt dw ($454 \times .02 \times .06 + 36.1/2$) (41,056 lb dw).

The 2005 annual quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. These are the same quotas that were established in the HMS FMP. As of October 2004, approximately 44 mt dw had been reported landed in the first 2004 semiannual fishing season in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations under 50 CFR 635.27(b)(1)(iv). The 2005 first trimester quotas for pelagic, blue, and porbeagle sharks are established at 162.7 mt dw (358,688 lb dw), 91 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

Fishing Season Notification

The first trimester fishing season of the 2005 fishing year for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2005. To estimate the LCS fishery closure dates, NMFS calculated the average reported catch rates for each region from the first semi-annual seasons from recent years (2001–2004) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure date and the beginning of the second trimester season (May 1, 2005) of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to

NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS proposes to close the Federal LCS fishery on either the 15th or the end of any given month.

Based on average LCS catch rates in recent years in the Gulf of Mexico region, approximately 92 percent of the available LCS quota (156.3 mt dw) would likely be taken by the end of February and 109 percent of the available LCS quota would likely be taken by the second week of March. Dealer data also indicate that, on average, approximately 9.8 mt dw (21,605 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 6 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 98 percent (92 + 6 percent) of the quota could be caught by the end of February. If the fishery remains open until the second week of March, the quota would likely be exceeded (109 + 6 percent = 115 percent). Accordingly, the Gulf of Mexico LCS fishery will close on February 28, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the South Atlantic region, and accounting for the reduction in effort due to the time/area closure off North Carolina, approximately 69 percent of the available LCS quota (133.3 mt dw) would likely be taken by the second week of February and 86 percent of the available LCS quota would likely be taken by the end of February. Dealer data also indicate that, on average, approximately 35 mt dw (77,161 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 27 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 96 percent (69 + 27 percent) of the quota could be caught by the second week of February. If the fishery remains open until the end of February, the quota would likely be exceeded (86 + 27 percent = 113 percent). Thus, the South Atlantic LCS fishery will close on February 15, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 60 percent of the available LCS quota (6.3 mt dw) would likely be taken by the end of April. Dealer data also indicate that no LCS landings have been reported received by dealers after a Federal closure and before the start of the second trimester season on May 1, 2005. Accordingly, the

North Atlantic LCS fishery will close on April 30, 2005, at 11:30 p.m. local time.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

This final rule has been determined to be not significant for purposes of Executive Order 12866.

As required under the Regulatory Flexibility Act, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule (69 FR 56024, September 17, 2004) and prepared a Final Regulatory Flexibility Analysis (FRFA) for the final rule. The FRFA examines the anticipated economic impacts of the preferred actions and any significant alternatives to the final rule that could minimize economic impacts on small entities. A summary of the information presented in the FRFA is below. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). NMFS does not believe that the proposed regulations would conflict with current relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

This final rule is being implemented to update the LCS and SCS regional quotas based on updated landings information and to implement a framework mechanism for annual adjustment of quotas. This final rule also allocates trimester season quotas, addresses the one-time transfer of over- or underharvests from semi-annual (2004) to trimester (2005) seasons, and modifies the fishing season notification requirement.

The need for and objective of the final rule are fully described in the preamble of the proposed rule (69 FR 56024, September 17, 2004) and in the final EA/RIR/FRFA and are not repeated in this rule.

As set forth above, NMFS received several comments on the proposed rule and draft EA during the comment period. NMFS did not receive any comments specific to the IRFA, but did receive a limited number of comments on the potential impact of regional quotas, trimester season quota allocations, and transferring over- or underharvest from semiannual to trimester seasons. In summary, commenters noted that regional quotas would result in a reduction in quota for the South Atlantic that, coupled with allocating regional quotas to trimester seasons based on historical landings, could have negative economic impacts on fishermen affected by the time/area closure off North Carolina.

The IRFA for the proposed rule acknowledged that there could be negative economic impacts as a result of lowering quotas for the South Atlantic, but noted that the quotas were based upon updated landings that indicate a shift in fishing effort in recent years from the South Atlantic to the Gulf of Mexico. In order to mitigate some of the impacts described in the comments, NMFS will divide the regional quotas for the South Atlantic and the Gulf of Mexico equally between the three trimester seasons, rather than dividing them according to historic landings, which would have resulted in the largest quota during the first trimester season when the time/area closure off North Carolina is in effect. Dividing the quotas equally between the trimester seasons will result in a higher quota for the second and third trimester seasons for the South Atlantic region. Given that NMFS is considering a delay to the start date of the second trimester season, a larger portion of the South Atlantic quota may be available to fishermen off North Carolina during the second and third trimester seasons when the time/area closure will no longer be in effect. In addition, NMFS will transfer over- or underharvests from the 2004 first semi-annual season to the 2005 first and second trimester seasons, rather than to the first trimester season only, to further mitigate the impact of overharvests that occurred during the 2004 first semiannual season.

This rule could directly impact commercial shark fishermen and dealers in the Atlantic, Gulf of Mexico, and Caribbean. NMFS estimates that as of April 2004, there were approximately 253 directed and 358 incidental permit holders, of which 199 (32 percent) reported landings in 2003. As of September 2003, there were 267 commercial shark dealers. All permit holders are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). Other small entities involved in HMS fisheries such as processors, bait houses, and gear manufacturers might be indirectly affected by the regulations.

Average annual gross revenues from sharks for commercial shark fishermen in 2003 was \$31,085.60 and \$1,946.18 for directed and incidental permit holders, respectively. Average ex-vessel prices were \$0.79 and \$0.53/lb dw for LCS and SCS flesh, respectively and shark fins averaged \$19.86/lb dw. Preliminary cost-earning data obtained in 2003 indicated that fishermen, on average, spent approximately \$1,765.49, \$570.97, and \$398.65 for fuel, bait, and ice, respectively, per trip.

An analysis of the economic impacts on the active directed and incidental shark permit holders was conducted as part of the FRFA. The preferred alternative to modify the regional LCS and SCS quotas based on updated landings information will increase the existing LCS regional quotas, and therefore potential landings, by 3 percent for the North Atlantic and 10 percent for the Gulf of Mexico, while reducing the South Atlantic quota by 13 percent. For SCS, the regional quotas will be increased by 6 percent for the Gulf of Mexico and 4 percent for the South Atlantic, and will be decreased by 10 percent for the North Atlantic. Based on landings and revenue information obtained from the 2003 logbooks, these potential increases or decreases in landings may result in similar increases or decreases to gross revenue, however, NMFS is unable to predict future ex-vessel prices for shark products.

The preferred measures outlined in this final rule were selected for the commercial Atlantic LCS and SCS fisheries because they minimize economic, ecological, and social impacts incurred on fishermen while, consistent with the Magnuson-Stevens Act and other domestic laws, enhancing equity among user groups, and allowing stocks to be managed on a sustainable basis. Other alternatives such as maintaining current regional quotas, establishing new regional quotas without an adjustment mechanism, establishing single quotas for LCS and SCS, or combining quotas in the Gulf of Mexico and South Atlantic regions were not preferred because they fail to base quotas on updated landings information or fail to provide a means of revising quotas on an annual basis, as necessary, to adjust for shifts in fishing effort and over- or underharvests. They also fail to minimize economic hardships that may result due to fishery closures or an inability to harvest the full quota for LCS and SCS. Furthermore, although several of the alternatives considered establishing a single quota that would have simplified management, this could have also resulted in regional inequality in shark landings. For example, fishermen in the North Atlantic would be at a disadvantage due to their geographic location and harvest periods that occur later in the year than in the Gulf of Mexico and South Atlantic regions. Maintaining the regional and trimester quotas promotes market stability by ensuring the availability of shark products year round and in all locales, and ensures a harvest in each region.

The alternative to remove the 30-day requirement to publish a fishing

season's length and quotas will be replaced with a proposed and final rule process. This will provide greater opportunity for public comment, and is not expected to result in negative economic impacts.

The Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities and in order to meet the objectives of this final rule and the Magnuson-Stevens Act, NMFS cannot change the requirements only for small entities. Additionally, all of the measures in this final rule would not be effective with exemptions for small entities. Thus, there are no alternatives available to satisfy the stipulations of the first and fourth categories listed above. NMFS is proposing these measures to modify regional and trimester quotas based on updated landings information and as such, the use of performance rather than design standards and the simplification of compliance and reporting requirements under this final rule are not practicable.

This final rule does not contain any new reporting or recordkeeping requirements. This final rule would not increase the administrative burden or professional skills required of permit holders to maintain compliance with commercial shark regulations.

Overall economic impacts of adjusting the regional quotas are expected to be minimal. Economic data from LCS revenues generated in 2003 indicate that the final adjustments to the regional quotas would result in an increase in gross revenues to the Gulf of Mexico (+3.5 percent; \$62,503) and North Atlantic (+.01 percent; \$3,083) regions, and a decrease in gross revenues to the South Atlantic (-2.6 percent; \$60,006) region. Economic data for the SCS fishery indicate that gross revenues for the Gulf of Mexico would decrease (-57 percent; \$14,885) while the gross revenues would increase for the South Atlantic (+54 percent; \$27,443) and the North Atlantic (+3 percent; revenues unknown because of lack of landings in 2003). The percentage change in gross revenues for SCS is larger than for LCS

in some of the regions, however, the total dollar value for the SCS fishery is minimal compared to the total gross revenues generated by the LCS fishery (approximately \$93,734 for SCS vs. approximately \$4,402,136 in 2003 for LCS).

The other alternatives considered may have negative economic impacts on fishery participants because they are not based on the best information available and do not provide the necessary flexibility to address changes in regional fishing effort and over- or underharvests. NMFS received comments in support of establishing a single quota for LCS or SCS and eliminating the existing regional quotas. While a single quota system would simplify management and monitoring of the fishery, regional quotas provide a more effective means of ensuring that historical catches and equitable distribution of quotas are maintained, accounting for regional differences in fishing effort, and providing flexibility to reduce mortality on juveniles and reproductive female sharks.

The final preferred alternatives for trimester season quota allocations and accounting for over- or underharvests in the transition from semi-annual to trimester seasons are not expected to have adverse economic impacts. The final preferred alternative for allocating trimester season quotas equally in the Gulf of Mexico and South Atlantic regions, and according to historical landing in the North Atlantic was selected because it provides equitable distribution of quotas based on the requirements of each of the regions. The final preferred alternative of dividing any over- or underharvests from the first semiannual season equally between the first and second trimester seasons will help minimize any economic impacts to the South Atlantic and should have little or no impact on the Gulf of Mexico or the North Atlantic.

Economically, the final alternatives provide the greatest benefit to those fishermen who will not have an opportunity to fish for sharks during the mid-Atlantic closure from January through July 2005. By dividing regional quotas equally among the trimester seasons, and dividing over- or underharvests from the 2004 first semi-annual season equally between the 2005 first and second trimester seasons, fishermen in the South Atlantic region will have an opportunity to harvest a potentially larger quota during the second and third trimester seasons compared to the other alternatives.

This final rule contains no new collection-of-information requirements subject to review and approval by the

Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The Biological Opinion (BiOp) prepared in October 2003, pursuant to the Endangered Species Act, in response to the proposed measures in Amendment 1 to the HMS FMP, found that the continued existence of commercial shark fishery would not jeopardize marine mammals, sea turtles, or smalltooth sawfish. Regional quotas and trimester seasons were actions finalized in Amendment 1 to the HMS FMP and therefore, were included in the BiOp. This final rule will not increase overall quotas or landings for LCS or SCS, therefore interactions with, or incidental takes of, protected species should not increase. The preferred alternatives simply re-distribute quotas based on updated landings information, distribute them equally across trimester seasons, and transfer over- or under harvests from semi-annual to trimester seasons.

NMFS believes the preferred alternatives would have no adverse impact on targeted species for reasons described above, and minimal ecological impact on protected species because the number of interactions during the second and third trimester seasons has historically been low when compared to the first trimester season. For example, a majority (30 out of 55) of the observed sea turtle interactions from 1999–2004 occurred during January and February. Sea turtle interactions during the second and third trimester seasons are much lower (16 out of 55). Since the measures implemented in this final rule will reduce effort during the first trimester season, impacts on sea turtles should be minimal.

Currently, pursuant to 50 CFR 635.27(b)(1)(iii) and (vi), NMFS files a notification of a shark fishing season's length and annual adjustments at least 30 days prior to the start of the season. This requirement was originally intended to address the need to provide shark fishermen with advance notice to prepare for the upcoming season. Given Amendment 1 to the HMS FMP and recent changes to shark management, NMFS proposes to remove the 30-day notification provisions and, as necessary and appropriate, issue proposed and final rules for season lengths and quotas

to facilitate more opportunity for public comment. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication the length of each season and any quota adjustments.

NMFS determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management (CZM) programs of coastal states in the Atlantic, Gulf of Mexico, and Caribbean. NMFS asked for states' concurrence with this determination during the proposed rule stage. Seven states replied affirmatively regarding the consistency determination, and NMFS presumes that the states that have not yet responded concur with the determination. One state, North Carolina, replied that allocating quotas according to historic landings, was not consistent with the State's CZM program. North Carolina commented that since the time/area closure will be in effect from January through July, dividing the quota according to historical landings would result in "frontloading" or allocation of a large portion of the South Atlantic's quota to the first trimester season when fishermen off of North Carolina will be unable to fish. North Carolina felt that dividing the quota equally among the three trimester seasons would allocate a larger proportion of the quota to the second and third trimester seasons than would have been the case using historic landings, and that this would mitigate the economic impact on the South Atlantic region and North Carolina fishermen in particular. In the proposed rule, NMFS considered several alternatives for trimester season quota allocations, including allocating quotas according to historical landings as the preferred alternative. During the public comment period, NMFS heard comments in favor of splitting quotas evenly between the three trimester seasons in the Gulf of Mexico and the South Atlantic but according to historic landings for the North Atlantic region because of fishing opportunities that occur later in the year. As a result, the final rule will divide the Gulf of Mexico and South Atlantic trimester season quotas equally. The North Atlantic quota will be divided according to historical landings. Therefore, NMFS finds that these final regulations are consistent with all applicable approved coastal zone management programs to the maximum extent practicable.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,

Reporting and recordkeeping requirements, Treaties.

Dated: November 23, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Services.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.27, paragraphs (b)(1)(i), (b)(1)(iii), (b)(1)(iv), and (b)(1)(vi)(A) and (B) are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split among three fishing seasons: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

* * * * *

(iii) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,017 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The length of each fishing season will be determined based on the projected catch rates, available quota, and other relevant factors. Consistent with the Administrative Procedure Act, NMFS will publish in the **Federal Register**, prior to the beginning of the season, any annual adjustments.

(iv) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

* * * * *

(vi) *Annual adjustments.* (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one

region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1.

(1) NMFS will adjust a region's annual quota based on the following criteria: if a region has an overharvest of 10 percent or greater of its regional annual quota, and any other region or regions has an underharvest of more than 10 percent of their respective quotas, then NMFS may transfer up to 10 percent of the quota from the region or regions with the underharvest to the region with the overharvest. Any overharvest above 10 percent would be counted against that region's quota for the same season of the following year. If the underharvest is less than 10 percent of the quota for any other region or regions, NMFS would not transfer any quota, even if another region or regions had an overharvest in excess of 10 percent.

(2) Other factors NMFS would consider before making a transfer

include, but are not limited to, the likelihood of protected species interactions and bycatch rates within a region, historic landings for the region, total landings reported for all regions at the end of their respective seasons, the number of storms during the open season, the size of a region's quotas, the amount of available quota remaining, the projected ability of the vessels fishing in the region from which the quota is proposed to be removed to harvest the remaining quota, and the projected ability of vessels fishing in the region receiving the quota to harvest the additional quota.

(3) Quotas for each region would be further divided equally (33.3 percent/season) among the trimester seasons in the Gulf of Mexico and the South Atlantic regions, and based upon historic landings of 4, 88, and 8 percent for the first, second, and third trimester seasons, respectively, in the North Atlantic region. NMFS would make adjustments to trimester season quotas

based on a number of factors including, but not limited to: the historic landings for each trimester season in a particular region, total landings reported for all seasons at the end of their respective seasons, the number of storms during each open season, the size of each seasonal quota, the amount of available quota remaining, and the projected ability of vessels fishing in the season receiving additional quota to harvest the additional quota.

(4) Consistent with the Administrative Procedure Act, NMFS will publish in the **Federal Register**, prior to the beginning of the season, any annual adjustments.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season.

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